

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3 **INDICTMENT NO: 57/2018**

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5 **THE QUEEN**

6  
7 **v.**

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9 **R v. JOHN MICHAEL SORIANO**

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13 **Appearances:** **Mr. Kenneth Ferguson for the Crown**  
14 **Mr. Crister Brady, Counsel for the Defendant**

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17 **Before:** **Hon. Justice Marlene Carter (Actg.)**

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19 **Heard:** **26 June 2019**

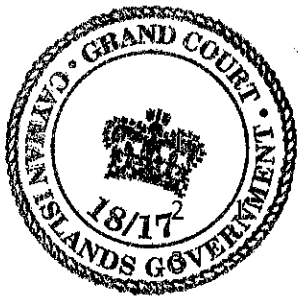
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21 **Sentence Delivered:** **9 July 2019**



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23 **HEADNOTE**

24 ***Criminal Law – Rape – Breach of Trust***

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26 **SENTENCE JUDGMENT**  
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**Preamble**

Pursuant to Section 31 of the *Criminal Procedure Code*, there is to be no reporting of the name of the Complainant or any details by which she can be readily identified. There is to be no identification of the Complainant in this case.

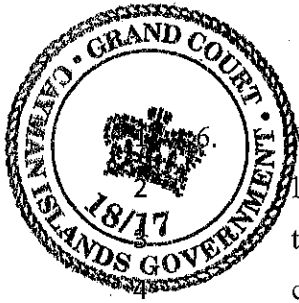
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2. The Defendant falls to be sentenced for a single count of rape having been found guilty after trial by judge alone.
3. On the 3<sup>rd</sup> of September 2018 the Complainant went to her friend’s home where she encountered the Defendant who was her friend’s boyfriend. As she waited on her friend to return home the Defendant forced himself upon the Complainant and proceeded to have sexual intercourse with her. The Complainant resisted the Defendant’s assault and described how she attempted to get away from the Defendant and how distressed she was during the incident. The Complainant immediately reported the assault to her friend when she returned home and was taken to hospital to be examined. The Defendant denied raping the Complainant and gave conflicting accounts of what had happened between them. The Defendant continues to deny that intercourse between himself and the Complainant was non-consensual.

**The Social Inquiry Report (SIR)**

4. Upon the verdict being pronounced, a Social Inquiry Report was ordered to assist the court in sentencing. The SIR reveals a Defendant who had up to this time led a normal life outside of the eye of the law. His upbringing and background do not reveal a Defendant who had exhibited any behaviour that could have been considered a forewarning that he would commit an offence of the nature for which he has been found guilty. He is a father to two young children and had been on islands only some months before this offence was committed.
5. The SIR reveals that the Defendant does not have a history of substance abuse although the Probation Officer did note an interesting observation in relation to alcohol use.

*“At the time of the offence, Mr. Soriano shared that he was under the influence of alcohol, as he had consumed about 5 shots of Bacardi. When asked why he consumed so much that evening, he stated that he was tired as he had worked a long day and was drinking in order to go to sleep.”*



While assessing the Defendant's general risk of reoffending at medium, I note that this finding is largely based on the probation officer's assessment of his leisure and recreation as high. However, this categorization can be misleading based as it is on the Defendant's current unemployed status, caused by his having been charged and convicted for this offence, and I therefore place no great emphasis on this aspect of the probation report.

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7 7.

The Defendant has maintained that sexual intercourse between himself and the Complainant was consensual and maintains that the Complainant is lying about what happened between them. I have noted the Probation Officer's evaluation and assessment in particular the following:

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*"About the possible sentencing outcome, Mr. Soriano is cognizant that the charge is a very serious one and is also aware of the likely outcome. He however has asked that some leniency be administered, given what he has outlined to be true. He shared that he would much rather be deported back to his home country where he can care for his children rather than be placed in custody."*

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**The Victim Impact Statement (VIS)**

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The Victim Impact Statement reveals a Complainant who has been and continues to be traumatized by the entire incident. In her statement to the Court the Complainant revealed:

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It is apparent to this Court that the Complainant will long feel the effects of this assault, more so because the Defendant was someone whom she trusted and did not expect that she would have to guard herself against. Relationship and acquaintance rape cannot be treated any differently or less

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seriously than rape by a stranger. The profound effect of a breach of trust when the offender is an acquaintance can never be overstated.

#### Aggravating Features

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10. A number of aggravating factors have been identified in relation to this offence:

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i. Breach of trust, the Defendant was the Complainant's best friend boyfriend. She knew him well and on the occasion of the incident had gone there to wait for her friend as she was not feeling well.

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ii. Lack of remorse on the part of the Defendant. The SIR records his attitude to the offence and his apparent lack of contrition.

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#### Mitigating Factors

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11. The Mitigating factors are as follows:

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i. Defendant has no previous convictions for any offence

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ii. There was no use of a weapon to assist the Defendant to commit the offence

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iii. There was no physical violence or threat of violence used on the victim and the victim did not suffer any particular physical injuries as a result of the assault.

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iv. The offence appears to be opportunistic. This finding is not intended to diminish in any way the seriousness of the offence and the sentence that is now being considered. I take this factor to mean only that there was no evidence that the Defendant had planned to force himself on the Complainant nor was there any evidence from the Complainant at trial that the Defendant had displayed any unwanted advances to her before the date in question.

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#### Court's Considerations

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12. In this case sentence is being considered after trial.

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13. *Section 128 of the Penal Code* sets the maximum sentence for rape as life imprisonment. This is to reflect this society's abhorrence for this type of offence by placing in the category of such other serious offences such as murder, manslaughter, robbery and grievous bodily harm. It has been noted in Counsel's submissions that the Court of Appeal has reviewed and upheld lengthy sentences due to the prevalence of this offence in the Cayman Islands.

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1 14. In *R v Dilbert*<sup>1</sup>, a case in which the Defendant was sentenced to 15 years imprisonment for rape,  
2 The Court of Appeal re-affirmed the Chief Justice's Tariff Guidelines of 2002 that the starting  
3 point for rape with no aggravating or mitigating factors was between 10-12 years. There are a  
4 number of relevant observations made in *Dilbert* that will influence the sentence in this case:



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- 6 a. The tariff of between 10-12 years for rape was intended to indicate “a sentence to be  
7 applied in a typical case.”
- 8 b. The presence of aggravating factors can be expected to take the appropriate sentence not  
9 merely to the upper end of the 10-12 years bracket, but above that bracket. So also, the  
10 presence of mitigating factors may take the appropriate sentence below the lower end of  
11 that bracket.
- 12 c. This is likely to be the result in a typical case where there has been an early guilty plea, as  
13 the 2002 Statement on Tariff itself recognizes.
- 14 d. In *R v Jeffrey Barnes, Indictment No: 0087/2011-B* it was further clarified that: “In the  
15 statement of Tariffs and Guidelines 2002, the Chief Justice stated the tariff for offences of  
16 Rape, a first offence will attract a tariff of 10-12 years upon a not guilty plea.”

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18 15. Thank you to counsel for their helpful written submissions as well as oral submissions today. As  
19 well as the SIR and the VIS referred to above. I have also considered the authorities provided by  
20 Counsel. I have reviewed the authority of *R v Marlon Porter Indictment No 21 of 2016* which  
21 was submitted by the Crown. The Defendant in that case was sentenced to a term of imprisonment  
22 of 13 years after trial. I consider that that case is distinguishable from the instant as the Court noted  
23 in *Porter* that there were a number of aggravating factors including the nature of the attack which  
24 was described as prolonged and terrifying, the factor that the Defendant had been previously  
25 convicted for an offence of violence against a woman as well as the location and the time of the  
26 offence.

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28 16. In the circumstances of this case, I take as my starting point a sentence of 10 years imprisonment.  
29 There are a number of mitigating circumstances in this case which counsel for the Defendant and  
30 for the crown have both submitted that the Court should find as outweighing the aggravating factors  
31 identified. I do find that the mitigating factors outweigh the aggravating factors and that the starting  
32 point should be discounted accordingly.

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<sup>1</sup> 2010 (1) CILR 10

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17. In all the circumstance of this case I consider the appropriate sentence is 8 years imprisonment.

18. Any time that the Defendant has served on remand either before or after his conviction will be deducted from this sentence.



**Justice Marlene Carter (Actg.)  
Acting Judge of the Grand Court**

